

## **APPENDIX D TO DIR CONTRACT NO. DIR-SDD-1718**

### ***SERVICE AGREEMENTS***

#### **1. Definitions.**

“Certified Maintenance Technician” and “Certified Operator” shall mean an individual who is currently certified by Kodak as having successfully completed all applicable certification training, at Customer’s expense.

“Equipment” shall mean hardware sold by Kodak and covered by a Support Plan, when such term is used in these Service Contracts terms and conditions.

“Initial Support Term” shall have the meaning given in Section 7 below.

“Like Equipment” means equipment or software that is from the same or related product family, that performs a same or similar function using media or consumables that are of the same or similar format size.

“Site” shall mean the Customer location where the Equipment and/or Software resides.

“Support Plan” shall mean a service offering that sets out the level of service entitlements purchased by Customer.

“Support Services” shall mean Equipment and Software maintenance and support service as further described in the Product Addendum – Service Contracts.

**2. Support Services.** In the event that Customer orders Support Services from Kodak hereunder, Support Services shall be provided in accordance with a Support Plan. Customers who do not purchase a Support Plan hereunder may purchase Support Services from Kodak on a time and material basis in accordance with its then current policies and procedures as applicable for each purchase. Pricing shall be in accordance with Appendix C of DIR Contract No. DIR-SDD-1718. Parts provided by Kodak at no additional charge during a warranty period shall not entitle Customer to a refund, credit, discount or any other compensation, in accordance with the Support Plan.

#### **3. Additions and Deletions of Products to the Support Plan.**

(a) Additions. In the event that Customer has Kodak equipment and software that is currently under a Support Plan and Customer acquires additional Equipment and Software, for an additional charge, such Equipment and Software shall automatically be placed on that Support Plan at the end of any applicable warranty period for such Equipment and Software, unless Customer notifies Kodak otherwise at least thirty (30) days prior to the expiration of the warranty period. In such cases, the end of the warranty period shall be considered the Support Commencement Date (as defined in the Product Addendum – Service Contracts).

(b) New Support Plan. Subject to Section 5(a) and (b), in the event that Customer has Equipment and Software that is not currently under a Support Plan and is no longer under warranty, or Customer acquires used Equipment and Software from a third party, and Customer wishes to purchase a Support Plan for such Equipment and Software, Customer may do so upon Kodak’s inspection and acceptance. Pricing shall be in accordance with Appendix C of DIR Contract No. DIR-SDD-1718. Customer, at its expense, must take any remedial action required by Kodak, including without limitation in the case of Equipment and Software acquired from a third party, payment of a remanufacturing, certification and license fee, prior to such Equipment and Software being placed on a Support Plan.

(c) Deletions. Following the Initial Support Term and subject to Section 5(a) and (b), Customer may remove Equipment and Software from a Support Plan by providing Kodak written notice, in which case the removal shall be effective ninety (90) days following the end of the month of notification and the support fee adjusted accordingly.

**4. Customer Responsibilities.** Customer shall, at its expense, (i) perform all routine maintenance procedures and maintain the Site, each as specified by Kodak and applicable law; (ii) promptly install and maintain all Software Updates and procure any additional equipment or software that may be required for, or as a result of, such installation and maintenance; (iii) provide access to the Products during normal business hours; (iv) provide assistance, information, services, consumables and facilities as may be requested by Kodak to perform the Support Services; and (v) promptly return to Kodak, as requested, all replaced Parts.

## 5. Support Restrictions.

Support Services provided hereunder shall be subject to the following restrictions:

(a) Like Equipment. All Like Equipment that is in use at a Site must be covered concurrently under the same Support Plan and the same Telephone Support Hours of Coverage, as defined in the Support Plan.

(b) Customer's Employees. Customer shall not permit any of its employees or contractors to provide maintenance or support for the Products, unless that individual is (i) a Certified Maintenance Technician or Certified Operator, or (ii) instructed by Kodak. Notwithstanding the foregoing, in no case shall Customer permit any of its employees or contractors to provide maintenance or support for, or Kodak be required to train the Certified Maintenance Technicians or Certified Operators on, the laser components of the Equipment.

(c) Improper Use of the Products; Environmental Conditions. Kodak shall not be liable for resolving problems relating to (i) improper use of the Products, (ii) the configuration of the Site, including Customer's network, (iii) environmental conditions, or (iv) operation of or use of the Products in a manner that has caused premature wear or failure of components that in Kodak's reasonable judgment is beyond the "normal wear and tear" of the Equipment.

(d) Relocation of Equipment. Any Equipment under a Support Plan that is moved to a different location at the Site, or to a different Customer Site, shall remain eligible for Support Services under the Support Plan if (i) Customer gives Kodak reasonable prior written notice of Customer's intent to move such Equipment, and (ii) Kodak is given the opportunity to supervise and inspect the Equipment during the de-installation, packing, unpacking and reinstallation of the Equipment to ensure that the Equipment is in proper working condition following the relocation.

## 6. Prices; Payment.

(a) Applicable Taxes and Other Charges. In addition to amounts due hereunder, when applicable, Customer is responsible for and shall pay or reimburse Kodak for all (i) sales, use, excise, withholding, personal property, VAT or other similar taxes; (ii) duties or other customs charges; and (iii) storage and rigging. As per Section 151.309, Texas Tax Code, Government Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Government Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

(b) Additional Cost Items. Kodak reserves the right to charge Customer under a Support Plan for Additional Cost Items as follows:

(i) Equipment and Software. Any costs incurred by Kodak resulting from Customer (1) changes to the configuration of the Equipment or Software, or (2) postponement of delivery or installation of the Equipment or Software;

(ii) Support Services. Any costs incurred by Kodak, including without limitation, hourly labor rate, parts, zone surcharges (if applicable), and reasonable expenses (travel, accommodation, food (only in amounts allowable under the Texas Travel Management Program) and associated expenses, including telecommunications), in providing Support Services as a result of any of the following:

- (1) the Equipment and Software are repaired, modified, have features added to them, or are maintained, or altered, other than by Kodak, a Certified Maintenance Technician or Certified Operator;
- (2) the Equipment is damaged by any negligent or wrongful act or omission by any party other than Kodak or its agents, or is damaged or lost due to misuse, relocation, transportation, air conditioning, humidity control, electrostatic discharge, external electrical fields, or external causes, including accident, electrical power failure or surge, disaster, fire, flood, water, wind, and lightning;
- (3) Customer operates the Equipment with (i) hardware or software which has not been approved or licensed for use by Kodak; (ii) a version of software which is not the latest released Software Upgrade, or which does not contain the latest Software Update; or (iii) Prepress or DPS Consumables not authorized by Kodak for use with the Equipment;
- (4) Support Services are provided outside the Hours of Coverage specified in the Support Plan;
- (5) emergency weekend on-call Support Services are provided;
- (6) Customer has not installed a modem or VPN connection, as requested by Kodak;
- (7) Kodak installs self-installable Equipment at Customer's request;
- (8) replaced Parts are not returned as directed by Kodak; or
- (9) Service is required as a result of any of the events described in General Terms and Conditions Section 5(b).

Pricing shall be in accordance with Appendix C of DIR Contract No. DIR-SDD-1718.

(c) Changes to Support Plan Pricing. Support Plan pricing is subject to change at any time following the Initial Support Term upon thirty (30) days written notice to Customer. Support Plan pricing is subject to change, at any time during or following the Initial Support Term, based upon additions or deletions of Equipment and Software. Pricing shall be in accordance with Appendix C of DIR Contract No. DIR-SDD-1718.

(d) Payment. Payment shall be in accordance with Section 7C of Appendix A, DIR Contract No. DIR-SDD-1718.

**7. Support Term.** In the event that Customer purchases a Support Plan from Kodak, unless otherwise stated in the Product Addendum – Service Contracts, the initial term of the Support Plan (the “Initial Support Term”) shall be for a period of twelve (12) months, beginning on the Support Commencement Date identified in the Product Addendum – Service Contracts. Thereafter, the Support Plan shall renew upon 90-day mutual written agreement of the parties at Kodak’s then effective policies, support plans and current price schedule for successive twelve (12) month periods. Pricing shall be in accordance with Appendix C of DIR Contract No. DIR-SDD-1718. Hereinafter, the Initial Support Term and any renewal thereof shall be referred to as the “Support Term”.

#### **8. Warranty Limitations.**

Warranty Limitations. Customer’s sole remedy under the warranty described in this Section shall be, at Kodak’s option, (1) re-performance of the non-conforming Support Services, or (2) refund of the amount paid by Customer for the non-conforming Support Services.

#### **9. Termination; Suspension of Performance.**

(a) Either party may terminate a Support Plan following the Initial Support Term by giving ninety (90) days written notice to the other party.

(b) Kodak may terminate a Support Plan for cause on thirty (30) days notice if Customer fails to operate or use the Products other than in accordance with their specifications, the use for which it was intended or designed, or for which it has been configured by Kodak (i.e. plate type and size), or if Customer fails to maintain the Products in an environment which meets the requirements set out in the applicable operating manuals or other Kodak guidelines, or is in violation of any of the terms set forth in this Agreement. In the event of any insolvency proceeding by or against Customer, Kodak may terminate all or any part of this Agreement and Support Services provided hereunder upon notice to Customer.

Kodak may withhold Service or terminate the maintenance provisions of this Agreement and charge for time and materials for service if Customer is in default of payment or any other obligations under this Agreement, or any account for ORCs , DPS or Prepress Consumables, or any other agreement with Kodak. Kodak is not responsible under this Agreement if not allowed access to the Product or to software-related documentation or information. Customer agrees to assist and cooperate in diagnosis and service. Service and parts invoices due after an Agreement has been cancelled will be billed at normal rates.